

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CIVIL JURISDICTION**

**Civil Appeal No. HBA 01 of 2020**  
**DVRO Case No. 06 of 2018**

**BETWEEN:**                   **HARI CHAND** of Dala, Taveuni, Taxi Driver.

**1<sup>ST</sup> APPELLANT**

(Original 2<sup>nd</sup> Respondent in DVRO Case No. 06 of 2018)

**HARI CHAND aka HARRY CHAND** of Dala, Taveuni, Taxi Driver.

**2<sup>ND</sup> APPELLANT**

(Original 3<sup>rd</sup> Respondent in DVRO Case No. 06 of 2018)

**AND:**                           **JITIN KUMAR** of Naqara, Taveuni, Businessman.

**RESPONDENT**

(Original Applicant in DVRO Case No. 06 of 2018)

**BEFORE:**                   **Hon. Mr. Justice Vishwa Datt Sharma**

**COUNSELS:**               **Ms Raj R.** for the Appellants [2<sup>nd</sup> & 3<sup>rd</sup> Original Defendants/Respondents]  
**Mr Sen A** for the Respondent.

**Date of Decision:**       **06<sup>th</sup> July, 2022 at 9.30am**

**DECISION**

*[Appeal - Domestic Violence Restraining Order]*

## INTRODUCTION

1. The 1<sup>st</sup> and 2<sup>nd</sup> Appellants filed the Notice and Grounds of Appeal against the Ruling of the Learned Resident Magistrate delivered on 16<sup>th</sup> March 2020.
2. The Ruling delivered granted the following Orders:-

"Considering the evidence by the applicant and the first and second respondents the court makes the following orders as final unless varied, suspended or discharged by the Court:-

  - (i) Section 27 (non-molestation conditions) issued on the second respondent and third respondent.
  - (ii) Section 29 (non-contact conditions) issued on the second respondent and third respondent. In addition to the non-contact conditions, the second and third respondents to stay 100 meters away from the applicant."
3. The Appellants filed the following Grounds of Appeal:-

**Ground 1:** That the Honourable Trial Magistrate erred in law and in fact.

**Ground 2:** That the Honourable Trial Magistrate erred in law and in fact when making final orders in terms of Section 29 (non-contact conditions) with 100-meter distance.

**Ground 3:** That the orders made against the Appellants in this matter are perverse and in breach of his Constitutional Rights.
4. The Appellants reserved their right to file further grounds of appeal upon receipt of the Court Record.

## Determination

5. The First and Second Appellants are asking Court to allow the Appeal Application and further Section 29 (non-contact conditions) to be set aside.
6. **Ground 1 and 2** will be dealt with together since the question of Law and the fact has been raised. The Appellants submitted the following:-
  - The Hon. Trial Magistrate failed to consider that as per the Respondent's evidence, no physical assault was inflicted to justify for a non-contact order to be issued for the alleged dates of 22 June 2018 and 5 June 2018.
  - With relation to being assaulted in 1999, no documentary proof was provided to ascertain the claim.
  - The allegation of being verbally threatened and sworn at by the Applicant was disputed by the Respondent.
7. However, the Respondent submitted:-

- He was under fear and threat.
- Court should grant S.29 DVRO orders.
- DVRO Orders are for protection
- Respondent should be able to exercise his rights to contact the children.
- Seek dismissal of the appeal.

### **Ground 3**

8. The Applicant submitted that the orders made are perverse and in breach of the Constitutional rights. The Learned Resident Magistrate failed to consider that the Appellant will be deprived of their freedom of movement and association on the Island if the Applicant is in 100 meter distance. Hence, this will be in breach of their constitutional rights.

### **Domestic Violence**

9. However, Respondent sought for dismissal of the appeal in relation to any persons means violence against that person (the victim) committed, directed or undertaken by a person (the perpetrator) with whom the victim is or has been in a family or domestic relationship.

### **The Burden and Standard of Proof**

10. The general rule is that the party that makes the claim or allegation carries the burden of proof.
11. The standard of proof when deciding any question of fact is to be decided on the balance of probabilities [Section 46(1) of the Domestic Violence Act 2009].

### **Family or Domestic Relationship**

12. Section 2 of the Domestic Violence Act 2009 defines a family or domestic relationship to mean the relationship of a spouse, other family members such as father or mother in law, son or daughter in law or brother or sister in law or aunt or uncle in law or any other persons who in the particular circumstances should be regarded as a family member, person, who normally or regularly resides in the household or residential facility; boyfriend or girlfriend, or person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care.

### **Violence**

13. Section 3 of the DVRO Act 2009 provides the definition of 'Domestic Violence'.
14. The 1<sup>st</sup> Appellant is the father-in-law of the Respondent. The 2<sup>nd</sup> Appellant is the brother-in-law of the Respondent.

15. The Respondent instituted DVRO proceedings against the wife and the 1<sup>st</sup> and 2<sup>nd</sup> Appellants on 5<sup>th</sup> July 2018. The allegations made were that of assault and threats on the Respondent. Interim DVRO orders were made against the Appellants by the court. No DVRO orders were made against the Respondent's wife. Section 27 and 29 DVRO orders were made on 16<sup>th</sup> March 2020 accordingly.
16. It will be noted from the oral evidence at the Hearing that the Applicant testified that 'they were physically stopping me'. They used the words "if you take your children, we'll burn you." In here, the word referred to as they and we'll identifies the 1<sup>st</sup> and 2<sup>nd</sup> Appellants. The Appellant further testified that 2<sup>nd</sup> Appellant assaulted him.
17. Further, the Applicant in his evidence in cross-examination clarified that "during the incident on 22 June 2018, the First and Second Appellants were present outside the Court with a child. The Second Appellant threatened and swore at him.
18. I make reference to Section 23 of the Domestic Violence Act 2009 which provides that a domestic violence restraining order be made for the safety and wellbeing of a person if satisfied that the person is; or has been in a family or domestic relationship with the Respondents, and:-
  - (a) the Respondent has committed, is committing or is likely to commit domestic violence against that person relevant to the application;
  - (b) the making of the order is necessary for the safety and wellbeing of the person or another person relevant to the application, or both.
19. I find the sufficiency of evidence against both Appellants on the balance of probabilities that domestic violence has been committed against the Respondent and it is like that the commission of domestic violence in the domestic relationship is likely to be committed in future bearing in mind that the Applicant's behaviour and conduct would be repeated on to the Respondent.
20. Therefore, I find that the presiding Learned Resident Magistrate on evidence before him has correctly granted and imposed the Section 27 (non-molestation conditions) and Section 29 (non-contact conditions) DVRO orders together with maintaining distance of 100 meters between the Appellants and the Respondents accordingly.
21. The effect of the Orders are to ensure the parties are protected and their ability to go about their normal life and routines accordingly.
22. For the aforesaid reasons. the Appellant's appeal is accordingly dismissed.
23. There will be no order as to costs at the discretion of this court and bearing in mind the domestic relationship of the parties.

### **Orders**

- (i) The Appellant's Appeal is dismissed.
- (ii) No Order as to costs at the Court's discretion accordingly.

Dated at Suva this 06<sup>th</sup> day of July, 2022.



.....  
**VISHWA DATT SHARMA**  
**JUDGE**

cc: *Legal Aid Commission, Labasa.*  
*Maqbool & Company, Labasa.*